

# Young workers say their age holds them back

By Stephanie Armour, USA TODAY

After Jeremy Pepper was laid off from a marketing firm, he became discouraged by the job hunt. Unable to land a good position, Pepper began to suspect his age was keeping him from getting work.

But not because he's too old. Pepper, 31, believes companies won't hire him because he's too young.

"I know it sounds like Generation X whining, but this discrimination is real," says Pepper of Scottsdale, Ariz., who started his own firm, Pop Public Relations, in May. "It's just as big a problem for younger workers as for those who are older. Discrimination swings both ways."

It's not just gray-haired employees complaining about discrimination anymore. In this tepid economy, some workers in their 20s and 30s say their age is being unfairly held against them, and new legal developments mean more reverse age discrimination claims may soon be ending up in court.

Blame such complaints in part on the jobless recovery. As jobs dwindle, younger workers are competing with older hires for work -and they say they're losing out. The unemployment rate for workers ages 25 to 34 was 6.3% in September, eclipsing the 3.9% rate for employees 55 and older, according to the Department of Labor.

The issue is getting more attention now because of a case before the U.S. Supreme Court. The case, brought by employees against a division of General Dynamics Land Systems, will determine whether workers can sue when special payor benefit packages are offered only to older employees. While the workers suing were ages 40 to 49 as of July 1, 1997, employment lawyers say it could ultimately lead to protections for workers who are far younger.

If the high court rules in favor of the workers, copycat claims from employees who are younger than 40 could follow. And it could pressure political leaders to expand a federal law, the 1967 Age Discrimination in Employment Act, that protects workers ages 40 and older from job discrimination.

"As states are more willing to accept youth discrimination claims, Congress could enlarge the scope of the federal law," says Lisa Berg, a Miami employment lawyer. "Members of Congress could say these are claims that need to be protected."

Before 1997, workers at the General Dynamics division could retire with full health benefits if they had 30 years of service. But under a new union agreement, the company had to provide those benefits only if the retirees were at least 50 years old on July 1, 1997, and had 30 years of service. That meant that those employees who turned 50 on July 2, 1997, or later would not get any post-retirement health benefits.

About 200 workers ages 40 to 49 as of the July 1 date sued for age discrimination. The 6th U.S. Circuit Court of Appeals in Cincinnati sided with the employees, and the Supreme Court is expected to hear the case Nov. 12.

"The court is sitting on a powder keg," says Minneapolis-based employment lawyer Marshall Tanick. "It's always been considered older workers who are the focus of age discrimination. This case highlights the flip side."

Business groups, including the U.S. Chamber of Commerce, and some employment lawyers fear it threatens the long-accepted corporate practice of offering early retirement and special severance packages to workers based on age.

It could also pave the way for more lawsuits from people in their 20s and 30s saying they've been discriminated against because they're young.

## 'An embarrassing moment'

Many youthful workers feel singled out. Just 44% of employees ages 18 to 24 believe they are treated fairly on the job, according to a 2002 survey by Mercer Human Resource Consulting of 2,600 workers. That compares with 64% of employees ages 45 to 55.

Workers such as Richard Celler, 29, say their youth has been held against them. Two years ago, the Miami lawyer was covering a hearing on a major matter for a big client. The courtroom was packed. When Celler rose to argue his case, the judge put up his hand and stopped him. "Is it bring-your-kids-to-work day?" the judge joked. Then asked Celler if his dad would be arguing the motion.

"Obviously an embarrassing moment for me in front of my peers," recalls Celler. He won the hearing, nonetheless, which was in front of a courtroom of lawyers.

While some younger employees say they've had their age held against them, employment groups and AARP say older workers bear the brunt of discrimination.

"The incentive is to hire people who are younger," says Sharona Hoffman, an associate professor specializing in employment discrimination at Case Western Reserve University in Cleveland. "You can pay them less, (and) they are healthier."

Several factors are making reverse age discrimination an issue:

- **The weak economy.** Younger workers were hit hard in the 2001 recession and slow recovery. Forty-five percent of the long-term unemployed (who are out of work for more than six months) were ages 25 to 44 in 2002, according to an analysis by the National Employment Law Project and Economic Policy Institute. That's higher than the 35% who were 45 and older. The youngest Generation Xers are embarking on their careers

amid massive layoffs, further adding to the sense of frustration. And as the newest hires, they are the most likely to lose jobs under employers who determine layoffs using seniority systems.

**- Delayed retirements have younger workers feeling stuck.** Younger workers are experiencing career stalemate as graying baby boomers become reluctant to retire. Labor force participation by workers ages 55 to 64 rose by 2 percentage points from 2001 to 2002, a jump unprecedented in postwar history, according to a study by the Center for Retirement Research at Boston College. That has some younger workers feeling as if they're losing out.

**- Generational misperceptions.** Generation Xers say they are viewed by some as slackers who tend to be less loyal to the company than older workers. Some of those generalizations may hold true: Studies show younger workers are more likely to job hop and often tend to put family as a top priority.

But those impressions have left younger workers at a disadvantage.

"There are a lot of stereotypes," says Joanne Sujansky, an author in Pittsburgh and founder of Key Group, a business-consulting group. "Employers assume they are going to job hop and that they're not here for long. Discrimination toward youth does exist."

**- The deflated dot-com bubble.** Only a few years ago, Generation Xers were riding high on the technology wave. More than 70% of college students in 2000 thought they'd someday be millionaires, according to an Ernst & Young survey. Now, many of those students are out of work. The sudden shift in fortune has left some younger workers feeling aggrieved.

Carla Deluca, 32, a marketing consultant in San Francisco, says there's no question that younger workers fight against stereotypes left over from the dot-com rage.

"So many young people achieved incredible success during the dot-com era, particularly in the Bay Area," she says. "But what I sense the business world is left with now is an unfortunate, vivid memory of a bunch of cocky kids playing CEO in the sandbox."

### **'A costly issue'**

Reverse ageism is a real issue for employers who risk losing talented hires, according to U.S. Equal Employment Opportunity Commission Chairwoman Cari Dominguez.

"It's a costly issue for employers, in terms of hiring to replace and retrain if (younger workers) leave," Dominguez says. "It has to do with the perception that they're not experienced enough or haven't been there long enough. That attitude can drive younger workers to move on."

It can also drive them to sue. While federal law offers legal protection only to workers 40 and over, a number of states -including Alaska, Florida, Maine, Maryland and Mississippi -have their own employment discrimination laws that specify no age limits. Others set a cutoff of 18.

That's left an opening that's already led to reverse age discrimination claims. Michael Sisler said he was wrongly fired because his employer thought he was too young, and the New Jersey Supreme Court ruled that his case could go ahead.

Sisler had been recruited to run Bergen Commercial Bank's merchant credit card programs and took a job in 1993 as a vice president, earning \$70,000 a year. During a lunch after he was hired, the bank chairman asked him his age, according to the lawsuit. When Sisler said he was 25, he says in the lawsuit, the chairman appeared shocked and instructed him not to tell anyone his age.

Eight days after starting his job, Sisler said he was told he might be fired and should work for the bank in another capacity, such as a consultant. He refused a different job and was fired after less than five months with the bank, according to the lawsuit.

The New Jersey Supreme Court ruled in 1999 that he could sue under state law for age discrimination, even though he was only 25. The case was settled before trial.

"At the time of his hiring, they were obviously aware of his age, but they still hired him. If they engaged in reverse age discrimination, they wouldn't have hired him," says Angelo Genova, a lawyer in Livingston, N.J., who represented the bank.

Most employees who sue face a tough road, however.

"The burden (of proof) is so high that it's difficult for an employee to succeed," says Berg, the Miami employment lawyer, adding that it's possible that the current attention to reverse ageism could pressure Congress to expand the scope of who is protected by federal law.

Until then, some younger workers say they will continue to try the same tricks their gray-haired counterparts use to hide their age. But unlike their older colleagues, they say they will try to add years instead of taking them away.

"During my job search, I had much more of a challenge making myself look older, since I am often mistaken for 16," says Patricia Froelich, 21, a publicist in Orlando.

"I tried my hardest to look older -using everything from fake reading glasses (to) more conservative clothing and carrying a briefcase."